

MINUTE ENTRY
FALLON, J.
January 29, 2004

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

IN RE: PROPULSID : **MDL NO. 1355**
PRODUCTS LIABILITY LITIGATION : **SECTION "L"**
 : **JUDGE FALLON**
..... :

THIS DOCUMENT RELATES TO ALL CASES

A pretrial status conference was held Thursday, January 29, 2004, at 9:00 a.m. in the courtroom of Judge Eldon E. Fallon. In attendance for Plaintiffs were Russ Herman, Leonard Davis, Charles Zimmerman, Arnold Levin, Robert Becnel, Jim Capritz, Stephen Murray, Dawn Barrios, Julie Jacobs, James Dugan, and John Olivier. In attendance for the Defendants were James Irwin, Charles Preuss, Monique Garsaud, Lisa Warner, and Elizabeth Knower . At the conference, counsel reported to the Court on the topics set forth in Joint Report No. 28 of Plaintiffs' and Defendants' Liaison Counsel.

1. Update to Rolling Document Production and Electronic Document Production

DLC advised the Court that there is no further scheduled document production. PLC continues to discuss document production with the Plaintiffs' Discovery Team and will discuss further with the DLC in the future.

2. State Liaison Counsel

State Liaison Counsel advised the Court that it had nothing to report.

3. Plaintiff Profile Forms and Authorizations

DLC advised the Court that as of January 26, 2004, they have received 2,822 PPF's, 989 are overdue, and 20 will become due in thirty days. The Defendants advised the Court that they will be filing a Motion to Dismiss with prejudice as to the 525 PPF's which are overdue to be set for hearing at the next Monthly Status Conference.

4. Service List of Attorneys

DLC provided the Court with an updated list of attorneys in the MDL case as well as related state court cases.

5. Motion for Class Certification

The Defendants reported that they are preparing a proposed scheduling Order which they will submit to the PLC when completed. The PLC advised the Court that they intend on filing a Motion for Class Certification within ten (10) days. The Court indicated that it will meet with liaison counsel concerning this issue after receiving the proposed procedure from the parties.

6. Plaintiffs' and Defendants' Respective Requests for Production of Documents

The PLC advised the Court that they served upon the DLC a Request for Admissions and Interrogatories regarding the business records of the Defendants on December 23, 2002. Thereafter, the DLC submitted responses, including objections. After reviewing the objections, the PLC reduced their request to approximately 229 documents. The PLC submitted this narrowed down list to the DLC on October 29, 2003, and the DLC submitted a response, including objections.

At the December 4, 2003 status conference, the PLC advised that it intended to take a 30(B)(6) deposition of the Defendants regarding these documents. Following the status conference, the PLC filed a deposition notice, indicating that the deposition was to take place on January 7, 2004. The DLC objected to the deposition and filed a Motion for Entry of a Protective Order on January 14, 2004. The PLC opposes the Motion.

The parties advised the Court that they had reached a resolution regarding this issue. The parties will submit the disputed documents to the Court with brief argument addressing their respective positions regarding the discoverability of the documents. The parties shall submit the documents in a binder and also on a CD-Rom to the Court within ten (10) days of the status conference.

Accordingly, the Defendants' Motion for Entry of a Protective Order is hereby DENIED AS MOOT, reserving the rights of the parties to re-urge the issue.

7. Trust Account

The Defendants made deposits of additional settlement funds into the Court's Registry on January 16, 2004 and January 20, 2004 since last month's status conference.

8. Declassified Documents

The parties advised that they had nothing new to report on this issue.

9. Mediation

The parties advised that no additional mediations have occurred since the last status conference.

10. Trial of Louisiana Cases

The DLC advised the Court that it would be furnishing a list of all trials scheduled around the

country, through the year 2004, together with the names of the lawyers involved in the particular trials and the courts where the matters are set.

11. Pharmacy Indemnity Agreements

DLC advised that it continues to produce copies of all pharmacy indemnity agreements to the PLC.

12. End Game Planning Committee

Counsel for Defendants and representatives of the PSC and the Plaintiffs' Settlement Committee have continued to discuss a system to formalize criteria and monetary evaluations for those cases which defendants are prepared to mediate. The parties indicated that they have met and communicated several times since the last status conference and will continue to do so.

The Court indicated that a resolution of this MDL shall be reached by year's end. Accordingly, the Court stated that it will take a more active role in the case to facilitate resolution.

13. Global Application of Daubert

DLC and PLC continue to have discussions regarding the DLC's desire to implement a procedure for the application of this Court's *Daubert* ruling in the *Brock* case in other MDL cases. The PLC indicated that it would object to any global application of *Daubert* rulings. The Court directed the parties to create a time table for addressing this issue and to present the time table to the Court at the next monthly status conference.

14. Motions to Withdraw as Counsel of Record

PLC advised the Court that it has no comment at this time.

15. Stipulation and Pre-trial Order Providing for Use at Trial of Depositions in State or Federal Courts

Parties advised the Court that they have been in communication regarding the preparation of a stipulation for use of depositions in MDL matters for use at trial in both state and federal courts. DLC has submitted a draft Pre-Trial Order to the PLC, which the parties are discussing. The Court directed the parties to create a time table for addressing this issue and to present the time table to the Court at the next monthly status conference.

16. CIS NED-32 Deposition

The PLC advised the Court that it issued a Notice of Deposition and scheduled the 30(B)(6) deposition regarding the final version of CIS NED-32 report to occur originally on January 15, 2004. The DLC advised that the corporate representative would be Dr. Soons. The deposition has been scheduled to take place on February 19/20, 2004, in Amsterdam.

17. Motion for Summary Judgment

The PLC advised the Court that they will be filing a Motion for Summary regarding John & Johnson's liability.

18. Bailey Motion

The Court received a Motion to Dismiss certain named defendants in Civil Action number 03-2734. The Court advised the parties to respond to the Motion and be prepared to discuss it at the next monthly status conference.

19. Scheduling of Next Pretrial Status Conference

The next pretrial status conference will be held on Thursday, March 11, 2004, at 9:00 a.m.